FRAUD POLICY

1. Introduction

1.1 One of the basic principles of public sector organisations is the proper use of public funds. It is therefore important that all those who work in the public sector are aware of the risk and the means of enforcing the rules against fraud/theft and other illegal acts involving corruption, dishonesty, or damage to property. This policy and response plan forms part of the Partnership Agreement between NHS Scotland Counter Fraud Services (CFS) and Health Boards and Appendix II of the Partnership Agreement (PA), Fraud, Bribery & Corruption Protocol (model policy and response plan) provides further detailed direction and help to staff dealing with circumstances suspected to be fraud.

1.2 NHS Forth Valley (the Board) has procedures in place that reduce the likelihood of fraud occurring. These include Standing Orders (SOs), Standing Financial Instructions (SFIs), operational procedures, a system of internal control and risk assessment. NHS Forth Valley engages CFS to promote a fraud awareness culture through a range of products and services. The Partnership Agreement (PA) includes reference to the Board and CFS proactively detecting and investigating fraud and assessing the risk of fraud and forms a key element of the Scottish Government's determination to counter fraud against NHS Scotland. This guidance is in line with the PA between NHS Forth Valley and the NHS Scotland Counter Fraud Services.
(See: Partnership Agreement (scot.nhs.uk))

2. Purpose of the Fraud Standards

2.1 The purpose of this document is to provide guidance to employees on the action, which should be taken when fraud, theft or corruption is suspected. Such occurrences may involve employees of NHS Forth Valley, Suppliers/Contractors or any third party. This document sets out the Board's policy and response plan for detected or suspected fraud. It is not the purpose of this document to provide direction on the prevention of fraud. NHS Scotland's policy on countering fraud is detailed in the Health Board Partnership Agreement 2022-25. The PA forms a key element of the Scottish Government's determination to counter fraud against NHS Scotland.

2.2 The Partnership Agreement is referenced in the Fraud section of the Scottish Public Finance Manual. This can be found at:
https://www.gov.scot/publications/scottish-public-finance-manual/fraud-and-gifts/fraud/

2.3 Whilst the exact definition of theft, fraud or corruption is a statutory matter, the following working definitions are given for guidance:

- Theft is removing property belonging to NHS Forth Valley, its staff or patients with the intention of permanently depriving the owner of its use, without their consent.
- Fraud or corruption broadly covers deliberate material misstatement, falsifying records, making or accepting improper payments or acting in a manner not in the best interest of the Board for the purposes of personal gain.

For simplicity this document will refer to all such offences as "*fraud*", except where the context indicates otherwise.

2.4 NHS Forth Valley already has procedures in place, which reduce the likelihood of fraud/theft occurring. These include within the Standing Orders, Standing Financial Instructions and accounting procedures, a system of internal control and a system of risk assessment. The Board also has a payment verification system which concentrates on Primary Care Services expenditure.

2.5 It is the responsibility of NHS Forth Valley and its management to maintain adequate and effective internal controls, which deter and facilitate detection of any fraud. The role of Internal Audit is to evaluate these systems of control. It is not the responsibility of Internal Audit to detect fraud, but rather to identify weaknesses in systems that could potentially give rise to error or fraud.

3. Public service values

3.1 The expectation of high standards of corporate and personal conduct has been a requirement throughout the NHS since its inception. MEL (1994)80, "Corporate Governance in the NHS", issued in August 1994, sets out the following public service values:

Accountability: Everything done by those who work in the organisation must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.

Openness: The organisation's activities should be sufficiently public and transparent to promote confidence between the organisation and its patients, staff and the public.

3.2 All those who work in the organisation should be aware of, and act in accordance with, the above values. In addition, NHS Forth Valley will expect and encourage a culture of openness between NHS bodies and the sharing of information in relation to any fraud.

4. NHS Forth Valley Policy, Public Interest Disclosure Act 1998 and Bribery Act 2010

4.1 NHS Forth Valley is committed to the NHS Scotland Counter Fraud Strategy and to the public service values outlined above. NHS Forth Valley is dedicated to maintaining an honest, open and well-intentioned atmosphere within the service and to the deterrence, detection and investigation of any fraud within the organisation.

4.2 NHS Forth Valley encourages anyone having reasonable suspicion of fraud to report the incident. It is NHS Forth Valley policy that no staff member will suffer in any way as a result of reporting any reasonably held suspicions. For these purposes "*reasonably held suspicions*" shall mean any suspicions other than those which are groundless and/or rose maliciously.

4.3 In addition, the Public Interest Disclosure Act 1998 protects whistleblowers from negative treatment or unfair dismissal. The disclosure must be made in good faith and workers must have reasonable grounds to believe that criminal offences such as fraud or theft have occurred or are likely to occur. The disclosure must not be made for personal gain.

4.4 NHS Forth Valley Whistleblowing Arrangements Policy aims to ensure that staff can safely raise concerns where they are witness to risk, malpractice or wrongdoing that affects others. Employees can be assured that concerns raised in good faith will be protected under current legislation. NHS Forth Valley staff can continue to raise any concerns with their line manager in the first instance and they can also seek support and advice from Human Resources (HR), staff-side representatives and occupational health in line with existing policies and procedures. Details of the support available to staff and copies of current national and local policies (including the Bullying and Harassment Policy and Grievance Policy) can be found in the HR Connect section of the NHS Forth Valley staff intranet. Confidential Contacts are available via email on fv.confidentialcontact@nhs.scot or by telephone **01324 566415.**

4.5 Whistleblowing standards have been introduced from 1 April 2021 across NHS Scotland. The standards include the role of an Independent National Whistleblowing Officer which forms

part of the Scottish Public Services Ombudsman. The phone line, 0800 008 6112 is open to anyone who wishes to raise concerns about practices in NHS Scotland. The focus of the new National Whistleblowing Policy in NHS Scotland is to:

- help staff raise concerns as early as possible, and,
- support and provide protection for staff when they raise concerns.

The Whistleblowing standards aim to support an open fair and just culture, where concerns can be raised early and dealt with promptly and professionally. The process set out by the National Whistleblowing Standards is a formal process.

4.6 Whilst we would encourage staff to raise any concerns or complaints through existing Board procedures, the National Confidential Alert Line for NHS Scotland employees has been established to provide an additional level of support for NHS employees who may wish to raise a concern about practices in NHS Scotland. This service is run by Protect, an independent whistleblowing charity. The Alert Line offers independent, confidential advice from legally trained expert staff on whether and how to raise a concern and can be contacted on 020 74046609. Further choices available to staff, patients and members of the public for reporting suspicions of fraud (either anonymously or as a named individual) are:

- the CFS Fraud Hotline, which is now powered by Crimestoppers, on 08000 15 16 28; or
- directly through the CFS Website on www.cfs.scot.nhs.uk.

4.7 The NHS Forth Valley Policy on Standards of Personal Business Conduct describes the minimum Standards of Business Conduct expected from all NHS staff. It is the responsibility of staff to ensure that they do not place themselves in a position which risks, or appears to risk, conflict between their private interests and their NHS duties.

Under the Bribery Act 2010:

- It is a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad.
- The maximum penalty for bribery was increased from seven to 10 years imprisonment with an unlimited fine.
- It is a corporate offence of failure to prevent bribery by persons working on behalf of a business, which means that NHS Forth Valley can be exposed to criminal liability, punishable by an unlimited fee if it fails to prevent bribery by not having adequate procedures in place that are robust, up to date and effective. The corporate offence is not a standalone offence and will follow from a bribery/ corruption offence committed by an individual associated with NHS Forth Valley, in the course of their work. NHS Forth Valley therefore takes its legal responsibilities very seriously.

4.8 If a bribery offence is proved to have been committed by an outside body corporate with the consent or connivance of a director or senior officer of NHS Forth Valley, under the Act, the director or senior officer would be guilty of an offence (section 14 offence) as well as the body corporate which paid the bribe.

4.9 Staff must be aware that a breach of the provisions of this Act renders them liable to prosecution and may also lead to potential disciplinary action and the loss of their employment and superannuation rights within the NHS.

4.10 NHS Forth Valley does not tolerate any form of bribery, whether direct or indirect by its staff, agents or external consultants or any persons or entities acting for it or on its behalf.

4.11 The success of NHS Forth Valley anti-bribery measures depend on all employees, and those acting for NHS Forth Valley playing their part in helping to detect and eradicate bribery. Therefore, all employees and others acting for or on behalf of NHS Forth Valley are encouraged to report any suspected bribery (see sections 4.4 & 4.5 on ways of reporting).

5. Roles & responsibilities

5.1 Responsibility for receiving information relating to suspected frauds has been delegated to the Fraud Liaison Officer (FLO). This individual is responsible for informing third parties such as CFS, Internal Audit and External Audit or the Police (where appropriate) when suspicions of potential fraud are brought to their attention, either directly or indirectly. The Scheme of Delegation included as Annex D within the Standing Orders of the Board state that the Authorised Deputy FLO is the Director of Finance.

5.2 The FLO shall inform and consult the Chief Executive and/or Director of Finance in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity. The FLO will advise the Director of Finance on any potential referral to CFS. The roles and responsibilities of NHS Fraud Liaison Officers are set out within Annex B of CEL 11 (2013) Strategy to Combat Financial Crime in NHS Scotland' https://www.sehd.scot.nhs.uk/mels/CEL2013_11.pdf

5.3 Where a fraud is suspected within the service including Primary Care Services such as independent contractors providing Medical, Dental, Ophthalmic or Pharmaceutical Services, the FLO will make an initial assessment and, where appropriate, advise CFS.

5.4 The roles and responsibilities of the Board's nominated Counter Fraud Champion are set out within https://www.sehd.scot.nhs.uk/mels/CEL2013_11.pdf
The contact details of the Counter Fraud Champion (CFC) are included in the Key Contacts listed in Annex 1 below.

5.5 The Director of Human Resources, or nominated deputy, shall advise those involved in the investigation on matters of employment law and other procedural matters, such as disciplinary and complaints procedures.

5.6 Where the incident is thought to be subject to either local or national controversy and publicity then the Board and the Scottish Government Health and Social Care Directorates should be notified before the information is subjected to publicity. It should be added that under no circumstances should a member of staff speak or write to representatives of the press, TV, radio, other third parties or publicise details about a suspected fraud/theft on Social Network Sites, blogs or Twitter. Employees must ensure that no action take, could give rise to an action for slander or libel.

5.7 It is necessary to categorise the irregularity prior to determining the appropriate course of action. Two main categories exist:

- Theft, burglary and isolated opportunist offences; and
- Fraud, corruption and other financial irregularities.

5.8 The former will be dealt with directly by the Police whilst the latter may require disclosure under the SGHD NHS Circular No. HDL (2002) 23 – Financial Control: Procedure where Criminal Offences are suspected.

RESPONSE PLAN

6. Introduction

6.1 The following sections describe NHS Forth Valley's intended response to a reported suspicion of theft, fraud or corruption. It is intended to provide procedures, which allow for gathering and collating evidence in a manner that will facilitate an informed initial decision, while ensuring that evidence gathered will be admissible in any future criminal or civil action.

Each situation is different; therefore the guidance will need to be considered carefully in relation to the actual circumstances of each case before action is taken.

7. Reporting theft, fraud and corruption

7.1 Where an NHS colleague is suspected of theft, fraud or corruption then it is imperative that advice is sought from HR at the earliest opportunity. However, in the first instance any suspicion of fraud, theft or corruption should be reported to the relevant Head of Department. If the suspected theft, fraud or corruption involves the Head of Department then any suspicion should be reported in writing to a more senior officer or directly to the FLO. The contact details for the Fraud Liaison Officer are shown in the Key Contacts listed in Annex 1 below.

7.2 Once a suspicion regarding an NHS colleague has been reported then it is essential that contact should be made with HR before proceeding with any internal investigation. This will allow senior HR officers and line managers to make any decision on potential suspension or Police involvement. It will also allow discussion and agreement between the Head of Department/senior officer and HR regarding formal referral of the suspicion to the FLO. Once an agreement is reached, the suspicion and the grounds for that suspicion should be submitted to the FLO. Where the suspicion relates to potential or actual fraud or corruption, information provided will be utilised by the FLO to populate a CFS1 form for formal referral of the matter to CFS who will consider the referral and take a view on whether a criminal investigation is justified.

7.3 For incidents involving Executive Directors of the Board, the FLO should contact the Chair of the Board or the Chair of the Audit Committee. It is important to act quickly when a suspicion is reported in order to minimise further losses to the Board. This also allows action to be taken to secure evidence required for any future proceedings; criminal or disciplinary.

7.4 Where the subject of the suspected theft, fraud or corruption is not an NHS colleague then the suspicion should be reported in writing to the Head of Department. It is important to capture as much information as is readily available regarding the person (or persons) suspected of fraud, theft or corruption for reporting to the FLO. The Head of Department and the FLO will then discuss and agree the most appropriate way forward, which may or may not include reporting the matter to Police Scotland and/or CFS.

7.5 For all instances where fraud or corruption is suspected a “nominated officer” will be appointed as the main point of contact for all stakeholders. For NHS Forth Valley, this officer is the FLO (see paragraph 5.1 above). In the absence of the FLO, the Deputy FLO will deal with the issue. For incidents involving any Executive Directors of the Board, the FLO will liaise with the nominated officer, who will be the Board Chairperson. It is important to act quickly when a suspicion is reported in order to minimise further losses to the Board and to allow action to be taken to secure any evidence that may be required for any future disciplinary or criminal proceedings.

7.6 CEL 44 (2008) updated the required reporting standards in a revised SFR 18 (Scottish Financial Return). The SFR 18 forms part of the Board’s annual accounts and the change was to improve reporting of all relevant items. The FLO will maintain a log of any reported suspicions of fraud, theft or corruption. The log will document, with reasons, the decision to take further action or to take no further action. The log will also record any actions taken and conclusions reached. This log will be utilised to help populate the Boards SFR 18.2 form which forms part of the Board’s annual accounts.

7.7 The nominated officer should consider the need to inform the NHS Forth Valley Board, the Chief Internal Auditor, External Audit, the Police and CFS, of the reported incident. In doing so, cognisance should be taken of the following guidance:

- Inform and consult the Director of Finance and the Chief Executive at the first opportunity, in all cases where the loss may exceed the delegated limit (or such lower limit as NHS Forth Valley may determine) or where the incident may lead to adverse publicity.
- CFS should be informed immediately in all but the most trivial cases. This should be progressed via the FLO.
- If fraud or corruption is suspected, it is essential that there is the earliest possible consultation with CFS. In any event, CFS should be contacted before any overt action is taken that may alert suspects and precipitate the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.
- If a criminal act is suspected, particularly fraud or corruption, it is essential that there is the earliest possible consultation with the Police. The Police should be contacted before any overt action is taken which may alert suspects and precipitate the destruction or removal of evidence. This includes taking action to stop a loss or tighten controls.
- At the stage of contacting the Police, the FLO should contact the Director of Human Resources to consider whether/when to initiate suspension of the employee pending an enquiry.

7.8 All such contact should be formally recorded in the Log. It should be noted that staff who wish to raise concerns about unprofessional behaviour or decisions (where fraud, theft or corruption are not suspected) should do so by following the guidance contained in the NHS Forth Valley Whistleblowing Policy. Following investigation of the complaint, if improper practices or criminal offences are suspected, the matter should be referred by the investigating officer to the FLO.

8. Managing the investigation

8.1 The decision on whether a referral is progressed by CFS as a criminal investigation is usually taken following correspondence between the FLO and CFS and usually involves an initial meeting to consider the available evidence. If the referral involves an employee of the Board then HR involvement in any initial meeting is crucial to avoid any conflict with ongoing or future disciplinary processes. Normally, the manager leading the investigation will be an employee from CFS. The circumstances of each case will dictate who will be involved and when.

8.2 The manager overseeing the investigation (referred to hereafter as the "investigation manager") should initially:

- initiate a diary of events to record the progress of the investigation.
- if possible, determine the nature of the investigation i.e. whether fraud or another criminal offence. In practice it may not be obvious if a criminal event is believed to have occurred. If this is established the Police, External Audit and the Chief Executive should be informed if this has not already been done.

8.3 CFS staff, acting on behalf of the Director of Finance on any matters related to the investigation of fraud) are entitled without necessarily giving prior notice to require and receive:

a) Access to all records, documents and correspondence relating to any financial or other relevant transactions, including documents of a confidential nature (in which case he shall have a duty to safeguard that confidentiality), within the confines of the data protection act;
b) Access at all reasonable times to any land, premises or employees of the Board;
c) The production or identification by any employee of any cash, stores or other property of the Board under an employee's control; and
d) Explanations concerning any matter under investigation.

8.4 If after initial CFS enquiries it is determined that there are to be no criminal proceedings then an internal investigation by NHS Forth Valley may be more appropriate. In this instance, all information/evidence gathered by CFS will be passed to NHS Forth Valley. The internal investigation will then be taken forward as appropriate in line with Employment Law, PIN guidelines and relevant HR policies such as the Management of Employee Conduct Policy.

8.5 Any formal internal investigation to determine and report upon the facts, should establish:

- the extent and scope of any potential loss.
- if any disciplinary action is required.
- the criminal or non-criminal nature of the offence (if not yet established).
- what can be done to recover losses.
- what may need to be done to improve internal controls to prevent any recurrence.

8.6 Where the report confirms a criminal act, and notification to the Police has not yet been made, then a formal report should be submitted to Police Scotland at that point.

8.7 Where recovery of a loss to NHS Forth Valley is likely to require a civil action, arising from any act (criminal or non-criminal), it will be necessary to seek legal advice through the Central Legal Office (CLO), which provides legal advice and services to NHS Scotland.

8.8 This report should form the basis of any internal disciplinary action taken. The conduct of internal disciplinary action will be assigned to the Director of Human Resources or delegated officer within the Directorate, who shall gather such evidence as necessary.

9. Disciplinary/dismissal procedures

9.1 Consideration should be made in conjunction with CFS/CFC/FLO on whether/when to suspend the employee(s) who are subject to any investigation, pending the results of the investigation. This should be carried out in line with NHS Forth Valley's Management of Employee Conduct Policy.

9.2 The disciplinary procedures of NHS Forth Valley have to be followed in any disciplinary action taken by NHS Forth Valley toward an employee (including dismissal). This may involve the person in charge of the investigation recommending a disciplinary hearing to consider the facts, reflect on the results of the investigation and recommendations on any further appropriate action, to the employee's line manager. Where the fraud involves a Primary Care Services Practitioner the Board should pass the matter over to the relevant professional body for action.

10. Gathering evidence

10.1 This policy cannot cover all the complexities of gathering evidence. Each case must be progressed based on the individual circumstances of the case, taking professional advice as necessary (including advice from CLO where deemed appropriate). Where CFS decides not to pursue a criminal investigation, for whatever reason, the recommended next steps may involve an internal, Board-level investigation. In these circumstances it is important that the gathering of evidence is carried out in a methodical and consistent way.

10.2 If a witness to the event is prepared to give a written statement, it is best practice for an experienced member of staff, preferably from the HR Directorate, to take a chronological record using the witness's own words. The witness should sign the statement only if satisfied that it is a true record of his or her own words.

10.3 At all stages of the investigation, any discussions or interviews should be documented and where feasible agreed with the interviewee.

10.4 Physical evidence should be identified and gathered together in a secure place at the earliest opportunity. An inventory should be drawn up by the investigating officer and held with the evidence. To prevent any changes being made to the original evidence, where possible, a replacement or alternative record should be implemented for business continuity. It is essential that the evidence is kept intact. If evidence consists of several items, for example a number of documents, each one should be tagged with a reference number corresponding to the written record.

11. Disclosure of loss from fraud

11.1 Guidance on the referring of losses and special payments is provided in CEL 10 (2010) – Revised Scottish Financial Return (SFR) 18: Enhanced Reporting of NHS Frauds and Attempted Frauds. This includes reporting of all forms of irregular activity which suggest that fraud may have taken place, even if the evidence is not of a standard that can be used for prosecution. Scottish Financial Return (SFR) 18.0 on Losses and Compensation Payments is submitted annually to the Audit Committee as part of the Annual Accounts. SFR 18 should include all losses, with appropriate description, aligned within the standard categories specified by the SGHSCD. External Audit should be notified of any loss as part of their statutory duties.

11.2 Management must take account of the permitted limits on writing off losses for "Category 2 Boards", as outlined in Annex C of CEL 10 (2010).

12. Police Involvement

12.1 It shall normally be the policy of NHS Forth Valley that, wherever a criminal act is suspected, the matter will be notified to the Police, as follows:

- During normal working hours, it will be the decision of the Director of Finance as to the stage that the Police are contacted. If the Director of Finance is unavailable, this decision will be delegated to the FLO.
- Outwith normal working hours, the manager on duty in the area where a criminal act is suspected should always report the matter to the Senior Manager and Executive Director On Call. It will be the decision of the Executive Director On Call as to the stage that the Police are contacted. In any case the manager on duty in the area where a criminal act is suspected should always report the matter to the Director of Finance and the FLO at the earliest possible time.

12.2 The nominated officer and investigating manager should informally notify the Police of potential criminal acts, to seek advice on the handling of each investigation at an early stage in the investigation.

12.3 Formal notification of a suspected criminal act will normally follow completion of the investigating manager's report and formal disciplinary action. It is important that the internal report is carried out in a timely manner to avoid delaying the Police investigation.

13. Press Release

13.1 To avoid potentially damaging publicity to the NHS and/or the suspect, NHS Forth Valley should prepare at an early stage, a Press release, giving the facts of any suspected occurrence and any actions taken to date e.g. suspension. The Communications Team within CFS, the CLO and the Police should agree the release where applicable.

13.2 Under no circumstances should a member of staff speak or write to representatives of the press, TV or radio, about a suspected fraud without the express authority of the Chief Executive.

13.3 The Officer in Charge of the criminal case, whether from CFS or Police Scotland, will be responsible for collaborating with the Board's communications department in relation to preparing and agreeing the timing and content of an appropriate press release.

14. Resourcing any internal investigation

14.1 The Director of Finance will determine the type and level of resource to be used in investigating any suspected fraud. The choices available will include:

- Staff from within NHS Forth Valley
- Internal Audit
- Specialist Consultant
- Police

14.2 In making a decision, the Director of Finance, should consider independence, knowledge of the organisation, cost, availability and the need for a speedy investigation. Any decision must be shown in the Log held by the Nominated Officer. A decision to take "No action" will not normally be an acceptable option unless exceptional circumstances apply.

14.3 In any case involving a suspected criminal act, it is anticipated that Counter CFS involvement will be in addition to NHS Forth Valley resources. In any case involving other suspected criminal acts, it is anticipated that Police involvement will be in addition to NHS Forth Valley resources.

15. The law and its remedies

15.1 Criminal Law - The Board shall refer all incidences of suspected fraud/criminal acts to CFS or the Police for decision by the Procurator Fiscal as to any prosecution.

15.2 Civil Law - The Board shall refer all incidences of loss through proven fraud/criminal act to the CLO for opinion, as to potential recovery of loss via Civil Law action.